

# HOUSE BILL REPORT

## ESSB 5644

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*As Reported By House Committee on:  
Judiciary*

**Title:** An act relating to adult entertainment businesses.

**Brief Description:** Regulating adult entertainment.

**Sponsor(s):** Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Rasmussen, Thorsness, A. Smith and Madsen).

**Brief History:**

Reported by House Committee on:  
Judiciary, February 28, 1992, DPA.

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**HOUSE COMMITTEE ON  
JUDICIARY**

**Majority Report:** *Do pass as amended.* Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Hargrove; Inslee; Locke; Mielke; H. Myers; Scott; D. Sommers; Tate; Vance; and Wineberry.

**Minority Report:** *Do not pass.* Signed by 3 members: Representatives Belcher; R. Meyers; and Riley.

**Staff:** Bill Perry (786-7123).

**Background:**

So-called adult entertainment establishments have been the object of continued concern in many communities. These establishments feature live performances involving nudity or near nudity as an attraction for customers. Some communities have complained that such establishments attract and encourage illegal activity including alcohol and drug abuse, prostitution, sexual exploitation of minors, and sexual assaults and other crimes of violence.

Generally, under court interpretations of the First Amendment to the federal constitution, the nude or seminude performances in these establishments are not necessarily "obscene." To the extent that they are not obscene, and can be said to contain some "expressive content" such

performances are forms of protected expression that cannot simply be banned. The courts have, however, allowed some regulation of these forms of protected expression. Such regulations may be permissible if they are reasonable as to time, place, and manner. Specifically, for example, zoning restrictions on "adult" movies have been upheld. In addition, as part of the authority granted under the repeal of prohibition, states are free to regulate much non-obscene behavior in establishments licensed to sell or serve liquor.

The United States Supreme Court in Barnes v. Glen Theatre, Inc. recently upheld an Indiana statute banning public nudity. Five members of the court agreed that the statute was not unconstitutional, but no majority of the court could agree on the reasoning for that holding. Three members of the court found that nude dancing is expressive conduct within the "outer perimeters" of the First Amendment and is therefore to be afforded some protection. These three judges concluded that the Indiana law's requirement of "pasties" and a "G-string" was not unduly burdensome. Another member of the court agreed that the statute was permissible, but disagreed as to the reason. A fifth member concluded that nude dancing is not protected by the First Amendment at all. Four members of the court would have held the statute unconstitutional.

The Washington State Supreme Court in O'Day v. King County upheld a King County ordinance to the extent that it regulates nude "conduct" rather than expression. The ordinance prohibits certain kinds of simulated sex acts and certain conduct between patrons and performers. It also allows completely nude dancing only on a raised stage at least six feet from the nearest customer. The court specifically stated that with respect to nude dancing, the state constitution provides greater protection of freedom of expression than does the First Amendment. The Washington court has also considered some aspects of licensing protected speech activities. In Seattle v. Bittner, the court invalidated a city ordinance that denied a license to run a movie theater because the applicant had a prior conviction for exhibiting obscene movies. The court held that the denial of a person's right to exercise a constitutionally guaranteed freedom on the grounds of the person's previous abuse of that freedom is an impermissible prior restraint and is unconstitutional.

A Washington law allows government entities to bring a civil action to close down "moral nuisances." This law covers, among other things, obscene and therefore unprotected forms of expression. A moral nuisance includes any business that regularly exhibits obscene films or sells obscene publications, or allows obscenity or prostitution. A moral

nuisance also includes any house, apartment, or building where drugs are illegally manufactured, sold, or consumed. The maximum civil fine imposable for knowingly maintaining a moral nuisance is the greater of the profits made from the nuisance or \$25,000.

***Summary of Amended Bill:***

A new chapter of law is created for the regulation of adult entertainment businesses. Adult entertainment businesses are those that regularly feature nudity or seminudity. Operators and owners of such businesses, and performers in such businesses, must get licenses from the Department of Licensing. Zoning restrictions are imposed on adult entertainment businesses. Various criminal and civil penalties are provided.

A legislative finding is made that adult entertainment businesses, when unregulated, promote illegal activities including sexual offenses, drug offenses, obscenity, pornography, assaults, and prostitution.

Every owner and operator of an adult entertainment business is required to obtain a yearly business license from the department. Applicants must supply various information, including a record of any criminal conviction for a sex offense, obscenity, pornography, prostitution, assault, or a drug offense. A conviction for any of these offenses is grounds for denial of a business license. The applicant must also submit to fingerprinting and a criminal background check by the State Patrol. The cost of a license is \$750 per year, or such higher amount as the department sets.

A business license will also be denied if the applicant:

- (1) is a partnership or corporation with partners, officers, or directors who do not meet the applicant qualifications;
- (2) has a manager or agent who does not meet the applicant qualifications;
- (3) is a corporation not authorized to conduct business in the state;
- (4) is under the age of 18;
- (5) fails to provide information requested or falsely answers questions; or
- (6) proposes the location of the business within a zone prohibited by state or local law or ordinance.

The business applicant is required to post notice at the site of the proposed business. Before issuing a license, the department must notify the local authorities of the application.

A 1,000-foot zoning limitation is established. An adult entertainment establishment may not be operated within 1,000 feet of any residential zone, single or multifamily

dwelling, church, park, playground, day-care center, or elementary or secondary school. This buffer zone may be increased or decreased by local jurisdictions upon findings regarding the secondary impacts of the change and the local or regional availability of locations for adult entertainment businesses. Existing businesses need not meet these zoning limitations until January 1, 1995.

Each business must file a monthly report with the department listing: the names, addresses, and dates of birth of each performer appearing during the month, and such further information as the department may require by rule.

Any change of the officers or directors of a corporation must be reported to the department within 30 days. A business license is transferable only to a surviving spouse of a deceased licensee. In order to renew any transferred license upon its expiration, the surviving spouse must meet all the qualifications required of an applicant.

Each performer at an adult entertainment business must obtain an annual performer's license from the department. The cost of a license is \$75 per year or such higher amount as the department sets. An applicant must be at least 18 years of age and must truthfully answer all information requested on the application form. The applicant must provide a record of any conviction for a sex offense, obscenity, pornography, prostitution, assault, or a drug offense. A conviction for any of these offenses is grounds for denial of a performer's license. The applicant must also submit to fingerprinting and a criminal background check by the State Patrol. Information supplied by an applicant is not subject to public disclosure.

A business or performer's license may be suspended or revoked if the licensee commits certain offenses. Those offenses include sex offenses, obscenity, pornography, prostitution, assault, or a drug offense.

The department is granted authority covering rule-making, complaints, investigations, and disciplinary actions. The department may summarily suspend a license if it finds that public health, safety, or welfare imperatively requires emergency action. Any person may obtain an injunction prohibiting a person from operating a business or performing without a license. A violation of such an injunction is subject to a civil penalty of \$25,000. The penalty is to be paid to the department.

Failure to get a performer's license or a business license as required is a gross misdemeanor. A second conviction within two years for operating a business without a business

license is a class C felony. Allowing a minor on the premises of an adult entertainment business is a gross misdemeanor. Hiring a minor to perform in an adult entertainment business is a class C felony.

The department is granted immunity for actions taken in compliance with the new chapter. Local legislative authorities and local officials are given immunity for official acts performed in the course of the administration or enforcement of this chapter.

The chapter does not preempt local regulation of adult entertainment. Local jurisdictions are given express authority to regulate, tax, or zone such businesses.

The local authorities may request the state to join in the defense of challenges to the new chapter.

The civil penalty for maintaining a moral nuisance is increased to a maximum of \$50,000.

**Amended Bill Compared to Engrossed Substitute Bill:** The amended bill corrects an already passed effective date.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect on January 1, 1993.

**Testimony For:** This bill is necessary in order to help smaller local jurisdictions, in particular, combat the problem of adult entertainment. When these businesses are inadequately regulated, they can lead to serious secondary problems of criminal activity.

**Testimony Against:** The bill is unconstitutional in several ways. It also is unnecessarily duplicative of local regulations. Local government already has the authority to do everything called for in the bill.

**Witnesses:** Senator Nelson, prime sponsor (in favor); and Jack Burns (opposed).